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5 **UNITED STATES DISTRICT COURT**  
6 **DISTRICT OF NEVADA**

7 TERRANCE L. OLIVER,

8 *Plaintiff,*

9 vs.

10 JAMES G. COX, *et al.*

11 *Defendants.*  
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2:12-cv-01029-JCM-CWH

ORDER

14 Plaintiff, a Nevada state inmate, has filed an application (#1) to proceed *in forma*  
15 *pauperis* seeking to initiate a civil rights action along with a motion (#2) for appointment of  
16 counsel.

17 Plaintiff has not submitted a proper application to proceed *in forma pauperis*. Under  
18 28 U.S.C. § 1915(a)(2) and LSR 1-1 and LSR 1-2 of the local rules, a plaintiff must submit an  
19 application on the court's required form. The plaintiff must use the current version of the form,  
20 which was revised effective July 21, 2008. In the present case, plaintiff used pages from  
21 either a superceded version of the form and/or a "homemade" version of the required form.  
22 The financial certificate in particular clearly is from a superceded version of the form.

23 It does not appear from review of the allegations presented that a dismissal without  
24 prejudice would materially impact the analysis of the timeliness issue or other issues as to a  
25 promptly-filed new action.<sup>1</sup>  
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27 <sup>1</sup>From the allegations presented, it appears subject to substantial question whether the action is  
28 cognizable in a federal civil rights action as opposed to a federal habeas action following exhaustion of state  
judicial remedies. Petitioner is seeking to challenge administrative action that he alleges deprived him of 540

(continued...)

1 IT THEREFORE IS ORDERED that the application (#1) to proceed *in forma pauperis*  
2 is DENIED without prejudice.

3 IT FURTHER IS ORDERED that the motion (#2) for appointment of counsel is DENIED  
4 without prejudice.

5 IT FURTHER IS ORDERED that this action is DISMISSED without prejudice to the  
6 filing of a new complaint in a new action together with either the required \$350.00 filing fee  
7 or a properly completed application to proceed *in forma pauperis* on the proper form and with  
8 all required, and new, financial attachments.

9 IT FURTHER IS ORDERED that the clerk shall SEND plaintiff two copies each of an  
10 *in forma pauperis* application form for a prisoner and a § 1983 complaint form, one copy of  
11 the instructions for each form, and one copy of the papers that plaintiff submitted in this  
12 action.

13 The clerk shall enter final judgment accordingly, dismissing this action without  
14 prejudice.

15 DATED: November 27, 2012.

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19 JAMES C. MAHAN  
20 United States District Judge  
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25 <sup>1</sup>(...continued)  
26 days of sentencing credit. As plaintiff's claims appear to necessarily challenge the length and duration of his  
27 confinement, it would appear that he may not proceed via a federal civil rights action at this juncture. In the  
28 final analysis, it is plaintiff's responsibility to timely seek relief in an appropriate procedural vehicle in a proper  
court. The court leaves a definitive resolution of any such issues to a properly-commenced federal action.  
The court notes these issues only in determining that a dismissal without prejudice of the present improperly-  
commenced action will not materially impact the consideration of such issues in a promptly-filed new action.